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CITATIONS

776507—48——1

In the Supreme Court of the United States

OCTOBER TERM, 1947

No. 613

FRANK HYNES, REGIONAL DIRECTOR, FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR, PETITIONER

v.

GRIMES PACKING CO., KADIAK FISHERIES COMPANY, LIBBY, MCNEILL & LIBBY, FRANK MCCONAGHY & CO., INC., PARKS CANNING CO., INC., SAN JUAN FISHING & PACKING CO., AND UGANIK FISHERIES, INC.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

The Solicitor General, on behalf of petitioner, prays that a writ of certiorari issue to review the judgment entered in this case on November 21, 1947, by the United States Circuit Court of Appeals for the Ninth Circuit.

OPINIONS BELOW

The opinion of the district court (R. 42–61) is reported at 67 F. Supp. 43. The opinion of the circuit court of appeals (R. 499–514) has not yet been reported.

JURISDICTION

The judgment of the circuit court of appeals was entered on November 21, 1947 (R. 515). The jurisdiction of this Court is invoked under section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. Whether the Act of May 1, 1936, authorizing the Secretary of the Interior to set aside "public lands" in Alaska as Indian reservations, empowered him to include an area of tidelands and adjacent coastal waters in order that the natives might be secure in their fisheries and, if so, whether the White Act of June 6, 1924, which prohibits the Secretary of the Interior from granting exclusive rights of fishery in the waters of Alaska, forbids him from including an area of tidelands and coastal waters in an Indian reservation.

2. Whether the respondents have sufficient interest in the lands under the coastal waters of Alaska to maintain this suit and, if so, whether the Secretary of the Interior is an indispensable party to a suit seeking to enjoin enforcement of regulations made by him relating to Alaska fisheries when the sole defendant to the suit is the Regional Director of the Fish and Wildlife Service of the Department of the Interior.

3. Whether a court of equity may properly determine whether certain remedies will be appli-

cable if the plaintiffs trespass on certain property.

4. Whether a court may grant to respondents authority to fish in an area in which the Secretary of the Interior, under valid authority, has prohibited fishing because the Secretary permitted Alaskan Indians to fish in the area.

5. Whether the penal provisions of the White Act may be used to prevent unauthorized activities violating White Act provisions in an area set aside as an Indian reservation.

STATUTES INVOLVED

Section 2 of the Act of May 1, 1936, c. 254, 49 Stat. 1250, 48 U. S. C. 358a provides:

> the Secretary of the Interior is hereby authorized to designate as an Indian reservation any area of land which has been reserved for the use and occupancy of Indians or Eskimos by section 8 of the Act of May 17, 1884 (23 Stat. 26), or by section 14 or section 15 of the Act of March 3, 1891 (26 Stat. 1101), or which has been heretofore reserved under any executive order and placed under the jurisdiction of the Department of the Interior or any bureau thereof, together with additional public lands adjacent thereto, within the Territory of Alaska, or any other public lands which are actually occupied by Indians or Eskimos within said Territory: * * *

Section 1 of the Act of June 6, 1924, c. 272, 43 Stat. 464, as amended, 48 U. S. C. 221–222,

commonly known as the White Act, provides in part:

> for the purpose of protecting and conserving the fisheries of the United States in all waters of Alaska the Secretary of Commerce from time to time may set apart and reserve fishing areas in any of the waters of Alaska over which the United States has jurisdiction, and within such areas may establish closed seasons during which fishing may be limited or prohibited as he may prescribe. Under this authority to limit fishing in any area so set apart and reserved the Secretary may (a) fix the size and character of nets, boats, traps, or other gear and appliances to be used therein; (b) limit the catch of fish to be taken from any area; (c) make such regulations as to time, means, methods, and extent of fishing as he may deem advisable. From and after the creation of any such fishing area and during the time fishing is prohibited therein it shall be unlawful to fish therein or to operate therein any boat, seine, trap, or other gear or apparatus for the purpose of taking fish; and from and after the creation of any such fishing area in which limited fishing is permitted such fishing shall be carried on only during the time, in the manner, to the extent, and in conformity with such rules and regulations as the Secretary prescribes under the authority herein given: *Provided,* That every such regulation made by the Secretary of

Commerce shall be of general application within the particular area to which it applies, and that no exclusive or several right of fishery shall be granted therein, nor shall any citizen of the United States be denied the right to take, prepare, cure, or preserve fish or shellfish in any area of the waters of Alaska where fishing is permitted by the Secretary of Commerce.[1]

STATEMENT

This action was instituted by the respondents on June 25, 1946, to enjoin the enforcement of a fishing regulation issued by the Secretary of the Interior with respect to certain tidelands and waters at the mouth of the Karluk River on Kodiak Island off the southern coast of Alaska and to have declared invalid a Public Land Order issued by the Secretary which included those tidelands and waters in a reservation for the Karluk Indians (R. 2–18). The only person named as defendant was petitioner Frank Hynes, the Regional Director for the Territory of Alaska of the Fish and Wildlife Service of the Department of the Interior.

The Karluk River, which empties into Shelikof Strait, is subject annually to large runs of salmon.

[1] The Secretary of the Interior succeeded the Secretary of Commerce in matters of fish control under the President's Reorganization Plan No. II of May 9, 1939, 53 Stat. 1431, submitted to Congress under the Reorganization Act of April 3, 1939, c. 36, 53 Stat. 561, and made effective July 1, 1939, by Joint Resolution of June 7, 1939, c. 193, 53 Stat. 813.

These salmon, returning from the sea, make their way to the headwaters of the river to spawn and die. On the west bank of the river, at its mouth, is located the Indian village of Karluk. The Karluk natives are Aleuts who have from time immemorial derived their livelihood from fishing, principally from these salmon runs. Their customary method of catching the salmon is by stationary nets operated from the beach, known as beach seines.

Several large commercial fishing and packing companies have located canneries on Kodiak Island some distance from Karluk. These companies send their boats into the Karluk area as well as to other fishing grounds on Shelikof Strait to catch salmon by purse seines from the boats. Among these companies are the respondents in this case most of whom had commenced fishing in the Karluk area in 1938 or thereabouts (R. 142, 185, 216, 239, 256); purse seining had been forbidden at the river's mouth for many years prior to 1938 because of the conflicting interests of the two types of fishing (R. 352–355, 361–363).

On May 22, 1943, the Secretary of the Interior issued Public Land Order No. 128, 8 F. R. 8557, wherein he set aside certain fast land on both sides of the mouth of the Karluk River including Karluk Village, "and the waters adjacent thereto extending 3,000 feet from the shore line at mean low tide * * * as an Indian reservation for the use and benefit of the native inhabitants of

the Village of Karluk, Alaska, and vicinity." This order was ratified by vote of the Indians, as required by the Act of May 1, 1936 (R. 462).

Commercial fishermen were informed of the establishment of the reservation and were advised that they could continue to operate in all reservation waters except for a restricted area at the mouth of Karluk River, which was reserved for native beach seiners (R. 126, 462–463). Markers were set out indicating the boundaries of this restricted area by the Karluk natives and officers of the Bureau of Indian Affairs (R. 124–127). However, commercial fishing continued in the restricted area in 1944 and 1945, respondents having instructed their fishermen to ignore the markers (R. 127).

Subsequently, on March 22, 1946, the Secretary of the Interior issued Alaska Fisheries Regulation 208.23 (r), Title 50, C. F. R., 11 F. R. 3105 (R. 32–33). This regulation set apart the same waters as were included within the reservation created earlier by Public Land Order No. 128 as a reserved fishing area and closed it to all fishing except by natives in possession of such reservation and persons fishing under authority granted by those natives. The regulation consisted of two parts. First, it set forth a general prohibition against commercial fishing in the reservation area pursuant to the provisions of the White Act, which provides, *inter alia*, for fine or imprisonment of

violators of the regulations and forfeiture of gear used in the violation. The second paragraph of the regulations waived the general prohibition in the case of fishing by the Karluk natives and their permittees, reference being made to the 1936 Act.

On June 25, 1946, the appellees filed their complaint for injunctive relief against the enforcement of Fisheries Regulation 208.23 (r) and for a declaration that Public Land Order No. 128, creating the Karluk Reservation, is invalid insofar as it includes tidal waters. An *ex parte* restraining order was granted on June 26, 1946 (R. 37). On July 8, 1946, a hearing was held, following which the district court on July 18, 1946, filed a written opinion and granted a preliminary injunction (R. 37, 42). Referring to the dictionary definition of "land", the court concluded that the Act of May 1, 1936, did not authorize the Secretary of the Interior to include tidelands or other lands under water within an Indian reservation (R. 45–57). It further held that the fishery regulation of 1946 was "contrary to the common and statutory law, and therefore is invalid" (R. 58–59). Finally, the court ruled that neither the United States nor the Secretary of the Interior was an indispensable party to this suit (R. 59–60).

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[2] This regulation was amended on August 27, 1946, 11 F. R. 9528, by adding "Such authority shall be granted only by or pursuant to ordinance of the Native Village of Karluk, approved by the Secretary of the Interior or his duly authorized representative."

Thereafter, trial was had on October 28, 1946, the evidence relating for the most part to the facts concerning the investment in and the size of the canneries and the fishing business of the plaintiffs and injuries which they claimed would follow from enforcement of the regulations. These facts were summarized by the court in its findings (R. 24–29). While the findings do not so state, it also appeared that the fishermen had obtained permits from the natives permitting them to fish in the reservation waters so long as they did not interfere with native beach seining (R. 128). Conclusions of law in accordance with the court's earlier opinion were entered (R. 39) and, on November 6, 1946, a permanent injunction was filed (R. 40–42).

The circuit court of appeals affirmed. It concluded that the 1936 Act did not authorize the inclusion in an Indian reservation of lands below low water mark when the reservation has been created out of public lands; that the regulation was therefore not valid under the White Act; and that the Secretary of the Interior was not an indispensable party to the suit.

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[3] The opinion below states that there was no evidence that the fishing of the white men lessened the catch of the natives (R. 305). But the natives testified that respondents' operations interfered with the native beach seine (R. 352, 360) and stated that if the boats had kept out of the area the natives could have caught more fish (R. 361). The catch at Karluk declined 75% from the period 1888–1897 to the decade 1927–1936. *Fluctuations in Abundance of Salmon of the Karluk River, Alaska*, Fishery Bulletin No. 39.

REASONS FOR GRANTING THE WRIT

1. In *Alaska Pacific Fisheries* v. *United States*, 248 U. S. 78, 87, this Court based construction of a statute similar to the 1936 Act upon consideration of the circumstances in which the Indian reservation was created, particularly "the situation and needs of the Indians and the object to be attained." The court below adopted no such approach but instead rested its conclusion solely on a literal construction of the phrase "public lands". It stated (R. 508):

> Since the use of the word "lands" alone in Section 2 of the statute of 1936 would have given the Secretary of the Interior the power to reserve the ocean waters below low tide, we are required to give significance to the use by Congress of the word "public" before the word "lands" unless the phrase "public lands" has been determined to include lands of the United States in the ocean below low water mark.

The court then applied the rule of *Borax Ltd.* v. *Los Angeles*, 296 U. S. 10, 17, and similar cases, that the expression "public lands," when used in the general land laws, does not embrace tidelands and lands under navigable waters.[1]

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[1] The opinion below refers throughout to land below low water mark and states (fn. 1, R. 499) that the injunction and present litigation are not concerned with rights between high and low water. The injunction relates to land below mean low tide (R. 41) but the conclusions of law of the trial court stated (R. 39) that the order establishing the reservation was invalid "insofar as the same purports to cover or embrace the

This holding ignores legislative enactments in *pari materia*, the administrative construction of similar statutes, and court decisions all of which demonstrate that the phrase "public lands" in the 1936 Act includes submerged lands. Because of the physical situation in Alaska, Congress by the Act of May 17, 1884, c. 53, 23 Stat. 24, provided that "the general land laws of the United States" should not apply to Alaska and that "Indians and other persons in said district shall not be disturbed in the possession of any lands actually in their use or occupation or now claimed by them" (sec. 8). This provision includes tidelands as well as lands above the high water mark. *Sutter* v. *Heckman,* 1 Alaska 188; *Heckman* v. *Sutter,* 128 Fed. 393, 395 (C. C. A. 9); *Miller* v. *United States,* 159 F. 2d 997 (C. C. A. 9). Contrary to the holding of the court below, the phrase "public lands" when used in legislation relating to Alaska has the same comprehensive meaning as the word "lands" alone. The adjective "public" in the context of Alaskan legislation simply means "not private". This clearly appears from an analysis of the Act of March 3, 1891, c. 561, 26 Stat. 1095. Section 12 of that Act provides that persons "now or hereafter in possession of and occupying public lands in Alaska

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ocean or tidal waters below mean high tide." The theory of the court below, that the *Borax* case and similar decisions are controlling, would exclude tidelands, i. e., lands below high water mark, from the reservation.

for the purpose of trade or manufactures" might secure patents to 160 acres and section 13 provides the machinery for such purchases. Section 14 then sets forth various exceptions to sections 12 and 13 including lands occupied by Indians and concludes—

> there shall be reserved in all patents issued under the provisions of the last two preceding sections the right of the United States to regulate the taking of salmon and to do all things necessary to protect and prevent the destruction of salmon in all the waters of the lands granted frequented by salmon.

This provision, and the other exceptions of section 14, show that "public lands" in section 12 were not limited to uplands but included tidelands and lands under water. See also Act of July 3, 1926, c. 745, 44 Stat. 821, 48 U. S. C. 360.

The administrative understanding that "public lands" in Alaska included submerged lands is demonstrated by Proclamation No. 39, dated December 24, 1892, which set aside Afognak Island and lands within one mile from the shore thereof for fish culture purposes. 27 Stat. 1052. And, almost immediately after passage of the 1936 Act, the Department of the Interior considered the various problems raised thereby and the Acting Solicitor concluded that waters within 3,000 feet of upland might be included in the reservation. 56 I. D. 110. This construction has

been followed consistently not only in later opinions; 57 I. D. 461, but also by the action of the administrative officers establishing other reservations. Order of May 20, 1943, 8 F. R. 7731 (Akutan); Order of June 19, 1943, 8 F. R. 9464 (Wales); Order of April 22, 1946, 11 F. R. 6143 (Little Diomede).

When the occasion has arisen, the courts have given the phrase "public domain" a similar meaning with reference to Alaska. In *Alaska Gold Recov. Co.* v. *Northern M. & T. Co.*, 7 Alaska 386, 398, the court referred to submerged lands as part of the "public domain." And more recently in *Dow* v. *Ickes*, 123 F. 2d 909, 914 (App. D. C.), certiorari denied, 315 U. S. 807, the court referred to the White Act regulatory authority which relates solely to fishing and stated "The power given is appropriate for the regulation of activities upon the public domain, having as their object the reduction of public property to private use." Thus, undoubtedly because of the importance of waters in Alaska and because the general land laws have not been applied there, both Congress, the executive officials and the courts have not applied the usual rule but have used the terms "lands," "public lands" and "public domain" interchangeably in referring to submerged land owned by the Government in Alaska. It follows that the word "public" in the 1936 Act (which specifically referred to the 1894 Act) did not limit the lands described to upland.

The decisions such as *Borax Ltd.* v. *Los Angeles,* 296 U. S. 10, 17, on which the decision below is based are not apposite here since they do not deal with public lands in Alaska which, as we have shown, have been placed in a special category because of the unique conditions prevailing there. In addition, those decisions all relate to statutes providing for disposal of property of the United States. The 1936 Act did not authorize disposal but simply a reservation of the lands for a particular governmental use, i. e., protection and assistance of the Indians. This Court emphasized the importance of this distinction in *Alaska Pacific Fisheries* v. *United States,* 248 U. S. 78, 88, saying:

> The reservation was not in the nature of a private grant, but simply a setting apart, "until otherwise provided by law," of designated public property for a recognized public purpose—that of safeguarding and advancing a dependent Indian people dwelling within the United States.

The court below thought that the decision in *United States* v. *Holt Bank,* 270 U. S. 49, shows that there is no distinction between the construction to be given a disposal act and a reservation act. But in that case the question was not, as here, whether a reservation of public property for this particular purpose was valid, but rather whether existence of the reservation "operated as a disposal of lands underlying navigable waters within its limits" 270 U. S. at p. 58.

Both the courts and Congress have long recognized that the Indians of Alaska are largely, if not completely, dependent on fishing for their livelihood.[5] As Alaska Delegate Sutherland said, quoting an Indian leader, 72 Cong. Rec. pt. 2, p. 1202:

> "There are no people who have a greater right to demand of Congress that its rights be protected than the natives of Alaska. We live on fish and have lived on fish as our principal source of food for centuries. Today we still live on fish; we buy our clothing with fish, support our families with fish, educate our children with fish, and bury our dead from that source."[6]

The Secretary of the Interior urged adoption of the 1936 Act in order to fulfill the Government's obligations "in the protection of the economic rights of the Alaska natives." H. Rep. No. 2244, 74th Cong. 2d Sess., pp. 3–5; S. Rep. No. 1748, 74th Cong. 2d Sess. pp. 3–4. The overwhelming importance of fisheries in connection with Alaskan Indians is well illustrated by the fact that the natives of the Karluk Tribe live solely by fishing

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[5] See *Heckman* v. *Sutter*, 119 Fed. 83 (C. C. A. 9); Act of June 14, 1906, c. 3299, 34 Stat. 263; Act of June 6, 1924, c. 272, secs. 4, 5, 43 Stat. 464, 466, 48 U. S. C. 232, 234; Act April 16, 1934, c. 146, 48 Stat. 594, 48 U. S. C. 233.

[6] See also 72 Cong. Rec. pt. 3, p. 2408; 75 Cong. Rec. pt. 1, p. 60; Senate Joint Memorial 1, 77 Cong. Rec. pt. 1, pp. 1056, 1069; Hearings, H. Committee on Indian Affairs, H. R. 7902, 73rd Cong. 2d Sess. pp. 76, 498.

(R. 348.)[7] A reservation limited to frozen uplands in Alaska would have been of very little benefit to those natives. It is absurd to suppose that Congress thought, as the court below suggested (R. 5, 11), that use of the uplands for launching boats and for posts to which to attach nets would constitute adequate protection of the economic rights of the Indians.

It was considerations such as these that led this Court to conclude in *Alaska Pacific Fisheries* v. *United States*, 248 U. S. 78, that under section 15 of the Act of March 3, 1891, 26 Stat. 1101, the reservation properly included waters and submerged land adjacent to the Annette Islands. We submit that the considerations which led to that decision apply with at least equal force to the 1936 Act, which was aimed at protecting all the Government's wards in Alaska.

The court below seems to have thought that the "anti-monopoly" provision of the 1924 White Act operated to prohibit the inclusion of fishing waters in Indian reservations and that the 1936 Act should not be construed as a reversal of this policy. But the "anti-monopoly" provision does not purport to limit the authority under other statutes to reserve public property for particular uses, such as Indian fishing reserves. Cf. *United*

[7] The trial court excluded additional evidence offered by petitioner to show that the natives of Karluk depend on fishing and that the upland was of little economic value to them (R. 349–350; 366).

States v. *Wyoming*, 331 U. S. 440. It is on its face simply a limitation upon the regulations that may be issued under the White Act. It provides—

> That every *such regulation made by the Secretary of the Interior* shall be of general application within the particular area *to which it applies*, and that no exclusive or several right of fishery shall be granted *therein*, nor shall any citizen of the United States be denied the right to take, prepare, cure, or preserve fish or shellfish in any area of the waters of Alaska where fishing is permitted by the Secretary of the Interior. [Italics supplied.]

The legislative history of the Act demonstrates that it was not intended to tie the Government's hands in making provision for the economic protection of its Indian wards in Alaska. It was not intended to prohibit Indian fishery reserves. At the time the Act was passed many Indian reservations had been established in which exclusive control over adjacent waters was asserted on behalf of the natives. See 49 L. D. 592, concluding that a lease of fishing privileges within the Tyonek Reservation might be made on behalf of the Indians.[8] The representatives of the

[8] See also Proclamation No. 1332, April 28, 1916, 39 Stat. 1777 (Annette Island Fishery Reserve); Executive Order No. 6044, February 23, 1933 (Amaknak); Executive Order No. 1555, June 19, 1912 (Hydaburg); Executive Order 2228, August 2, 1915 (Chilkat). The validity of the Annette Island

Indians were among the foremost sponsors of the White Act and their interests were recognized by those concerned. See 65 Cong. Rec. pt. 6, pp. 5973–5975; *id.* pt. 10, p. 9688; Hearings, H. Com. on Merchant Marine and Fisheries, H. R. 2714, 68th Cong. 1st Sess.; Alaskan Territorial Fish Commission, *Conservation of the Fisheries of Alaska,* August 1923. As originally drafted the anti-monopoly provision was in broad terms providing that no exclusive right of fishery might be granted "by the Secretary of Commerce, the Alaska Territorial Legislature, the Alaska Fish Commission or any other constituted authority except the United States Congress." H. R. 4826, 68th Cong. 1st Sess. An exception was made, however, in the case of Indians. When the bill was amended so that the "anti-monopoly" provision only applied to White Act regulations the exception of Indians became unnecessary and was omitted. In accord with this history, the administrative officers construed the White Act as not affecting Indian fishing reserves. See Department of Commerce, *Laws and Regulations for Protection of Fisheries of Alaska,* (Dept. Circular No. 251, 10th ed.) June 21, 1924, pp. 5–6; see also Executive Order No. 6044, February 23,

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Proclamation was upheld by the court in *Alaska Pacific Fisheries* v. *United States*, 240 Fed. 274 (C. C. A. 9), which was affirmed by this Court on other grounds. The validity of the reservation was recognized in the Act of May 7, 1934, c. 221, 48 Stat. 667, 8 U. S. C. 601 note.

1933, establishing a native fishery reserve at Amaknak Island.

2. The questions presented have large importance for the Department of the Interior, which has responsibility for the protection of the natives and the conservation of natural resources. The issues affect not only the Karluk Indians but the many other natives for whom reservations have been or may in the future be established under the 1936 Act, which is the primary legislation on Alaskan native affairs. The opinion below has even broader implications since it holds that the expression "public lands" cannot include tidelands and submerged lands when it appears in any statute relating to Alaska. Doubt is cast, therefore, upon the validity of many other reservations, such as the Afognak fish culture reserve. And the construction given to the White Act throws doubt upon the validity of the many Indian fishery reserves that have been established both before and after passage of the Act. It is submitted that the decision of the court below is erroneous and is in conflict with applicable decisions of this Court, especially *Alaska Pacific Fisheries* v. *United States*, 248 U. S. 78.

3. If it is concluded that the Secretary of the Interior was authorized to include the submerged lands in the Indian Reservation, it would follow, we submit, that the issuance of the injunction was erroneous since respondents would then be trespassers and would have no standing to invoke the equity powers of the court. In any event, if this

petition for a writ of certiorari is granted we shall urge that the remedies of the White Act can properly be applied under the circumstances of the instant case.

4. Moreover, regardless of validity of the order establishing the Indian Reservation, questions which are of importance in administering the White Act are presented. In *Dow* v. *Ickes*, 123 F. 2d 909 (App. D. C.), certiorari denied, 315 U. S. 807, the court held that even if the claim there asserted that the Secretary of the Interior had violated the "anti-monopoly" provision in allocating trap sites was valid, the court could not compel the Secretary to permit the claimant to fish there. In the instant case the Secretary's order in its first paragraph closed the area to fishing and in the second paragraph stated an exception in favor of the Indians (R. 32-33). Even if the exception violated the White Act, the court was not thereby authorized to compel the Secretary to permit respondents to fish there. Yet that is precisely what the injunction does. The decision below is, in this respect, in conflict with the decision in *Dow* v. *Ickes*.

5. A question closely allied to the one just discussed is presented in determining what standing respondents had to institute this suit. Respondents did not possess any property right in the lands in question nor did they own a right of fishery. Indeed, their case rests on the premise that because of the White Act no one can be given an exclusive or special right of fishery. But it is well

settled that a person has no cause to complain when his legal rights are not violated even though he is damaged, and that there is no general right of citizens to enforce the public statutes. *Alabama Power Co.* v. *Ickes,* 302 U. S. 464; *Tennessee Power Co.* v. *Tennessee Valley Authority,* 306 U. S. 118, 139–140; *United States* v. *Midwest Oil Co.,* 236 U. S. 459, 471. A substantial question arises, therefore, as to whether, like the Public Contracts Act considered in *Perkins* v. *Lukens Steel Co.,* 310 U. S. 113, 127, the anti-monopoly provision of the White Act was intended to be a bestowal of litigable rights upon all citizens who desired to fish or was "a self-imposed restraint for violation of which the Government—but not private litigants—can complain."

6. Finally, a substantial question exists as to whether, under the principles announced by this Court in *Williams* v. *Fanning,* O. T. 1947, No. 47, the validity of the order of the Secretary of the Interior establishing the Karluk Indian Reservation can be decided in this case, where the sole defendant was the Regional Director of the Fish and Wildlife Service.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that this petition for a writ of certiorari should be granted.

PHILIP B. PERLMAN,
Solicitor General.

FEBRUARY 1948.

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